

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

| | | |
|---------------------------------------|---|-------------------------|
| Fair Isaac Corporation; and myFICO |) | |
| Consumer Services, Inc.; |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | Civil Action No: |
| Experian Information Solutions, Inc.; |) | 0:06-cv-04112 (ADM/JSM) |
| Trans Union LLC; VantageScore |) | |
| Solutions, LLC; and Does I through X; |) | |
| |) | |
| Defendants. |) | |
| |) | |

**DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION
TO STRIKE OR, IN THE ALTERNATIVE, FOR LEAVE TO FILE SUR-REPLY**

This Court should deny Plaintiffs' motion.

As an initial matter, Defendants' reply memorandum in support of their summary judgment motion on the antitrust counts stands on its own. The charts contained in Exhibits 49 and 50 accompanying Defendants' memorandum are intended to assist the Court in its review of the evidence, but if the Court does not believe the charts are helpful, then the charts can be ignored.

Defendants submitted the charts appearing at Exhibits 49 and 50 for the Court's convenience and to assist it in finding and reviewing the material potentially relevant to Plaintiffs' arguments. Plaintiffs' memorandum in opposition to Defendants motion contains a significant number of mischaracterizations about what is stated in documents and testimony referenced in their opposition. Rather than simply claim that such

misrepresentations or failures of proof were widespread and leave the Court with the burden of sifting through the many exhibits and “cite checking” each reference from scratch, Defendants submitted Exhibits 49 and 50 to allow the Court to compare Plaintiffs’ representations to quotations of the relevant language from the relevant documents.

Exhibits 49 and 50 also were submitted to assist the Court in reviewing and evaluating the voluminous amount of material submitted, often without pinpoint citation, by Plaintiffs in opposition to Defendants’ motion. Plaintiffs submitted 213 exhibits, totaling over 3,000 pages, accompanied by a 28-page declaration characterizing or quoting each document. In many cases, Plaintiffs refer to an exhibit without any citation to the page on which the relevant material is supposed to appear or refer to the record without citing anything. For example, on page 16 of the opposition memorandum, Plaintiffs discuss an Experian document regarding that company’s analysis of pricing options and cite to it only as “Exh.101,” with no reference to the page or pages on which the potentially relevant material appears. Similarly, on page 45, Plaintiffs describe the pricing analysis of one of their experts, Paul Meyer, but do not provide any citation to the portion of his report or supporting data that potentially relates to that representation.

Finally, Plaintiffs’ alternative proposal to file a sur-reply after the oral argument on Defendants’ motion is manifestly unfair. Such an approach would alter the order of briefing provided in the rules (allowing movant to file the last brief) and, more importantly, deny Defendants any opportunity to respond to Plaintiffs’ submission, even in the context of oral argument. If the Court were inclined to permit a sur-reply,

Defendants would prefer that the Exhibits simply not be considered rather than be subjected to one-sided post-argument briefing.

Accordingly, the Court should deny Plaintiffs' motion to strike or for leave to file a sur-reply.

Respectfully submitted this 25th day of March, 2009.

Lindquist & Vennum PLLP

By: /s/ Mark A. Jacobson
Mark A. Jacobson (MN Bar #188943)
Mark H. Zitzewitz (MN Bar #0289073)
LINDQUIST & VENNUM, P.L.L.P.
4200 IDS Center
80 South 8th Street
Minneapolis, MN 55402
(612) 371-3211
(612) 371-3207 (facsimile)

M. Elaine Johnston
Robert A. Milne
Jack E. Pace III
WHITE & CASE LLP
1155 Avenue of the Americas
New York, NY 10036-2787
(212) 819-8200
(212) 354-8113 (facsimile)
*Attorneys for Defendant Experian
Information Solutions, Inc. (and authorized
to sign on behalf of all Defendants)*

Lewis A. Remele, Jr. (MN Bar #90724)
Christopher R. Morris (MN Bar #230613)
BASSFORD REMELE
33 South Sixth Street, Suite 3800
Minneapolis, MN 55402
Tel: (612) 376-1601
Fax: (612) 333-8829

James K. Gardner
Ralph T. Russell
Dao L. Boyle
NEAL, GERBER & EISENBERG LLP
Two North LaSalle Street, Suite 2200
Chicago, IL 60602
Tel: (312) 269-8030
Fax: (312) 269-1747

*Attorneys for Defendant
Trans Union LLC*

Barbara Podlucky Berens (MN #209788)
Justi R. Miller (MN #0387330)
KELLY & BERENS, P.A.
3720 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Tel: (612) 349-6171
Fax: (612) 349-6416

*Attorneys for Defendant
VantageScore Solutions, LLC*